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ABSTRACT

State compulsory attendance statutes require parents and legal guardians to see that children are educated. Although courts have consistently upheld such statutes, the nature of these filings has changed. Whereas early-day legal action usually sought to protect the rights of some select group from constitutional infringement, more recent suits have sought to protect individuals desiring to teach their children at home. This paper discusses the new emphasis by providing a historical perspective tracing legal precedents and summarizing recent litigation. Court decisions through the 1970's usually sought to protect select groups from unconstitutional infringement of their rights. These include "Pierce v. the Society of Sisters" (1925), upholding children's right to attend private schools, and "Stephens v Bongart" (1937), compelling children to attend more formal schools (public or private), rather than receive home instruction or "equivalent education" for grades 1 through 8. In the landmark "Wisconsin v. Yoder" case, the U.S. Supreme Court upheld Amish parents' right, on First Amendment grounds, to terminate their children's public school attendance beyond the eighth grade. Recent litigation demonstrates much less balance and consistency, as may be seen in summaries of three southern cases. The courts are now paying closer attention to specific standards and requirements in compulsory education cases and deciding them on a case-by-case basis. Existing standards have been upheld, and the courts are making state legislatures responsible for defining the key issues. (MLH)

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COMPULSORY EDUCATION:

An Overview of the Law

by

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COMPULSORY EDUCATION

The public schools in the United States are rooted to a number of state laws that require children to attend them. These statutes require compulsory education, and thereby compulsory attendance, for children within certain ages. One author described these laws as the "backbone of the American education system."[1] He added:

> Laws relative to compulsory ediucation have been uniformly sustained against various charges that individual liberties guaranteed by the Constitution are unreasonably infringed upon. The courts have found that the enactment of compulsory attendance laws is a valid expression of the public power of the state. 2

Compulsory attendance statutes make it the duty of parents, guardians, or those who have legal control over children to see that these minors are educated. These laws also stipulate penalties for non-compliance.

While the courts have consistently upheld statutes having to do with compulsory attendance, the nature of these filings has changed. Early-day legal action usually sought to protect the rights of some select group from unconstitutional infringement of their rights. More recently, these suits have been filed to protect the rights of individuals who want to teach their children in their own homes. It is this change in the emphasis of compulsory education cases that this paper will trace.

HISTORICAL PROSPECTIVE

There was no compulsory education in the Colonies

after they broke away from England, although education was viewed as "the most important duty resting on parents."[3] By 1813, the problems presented by child labor were pressuring some state legislatures to pass laws dealing with compulsory attendance. The Connecticut Legislature enacted a law requiring the education of factory children that year, although the law generally was not enforced.[4]

A 1901 decision by the Indiana Supreme Court mandated compulsory education and gave the state a monopoly over that responsibility. The Court said:

> The welfare of the child and the best interest of society require that the state exert its sovereign authority to secure for the child the opportunity for an education.[5]

By 1925 virtually all children were guaranteed at least an elementary education.[6] The courts usually recognized criteria for exceptions, such as mental or physical disability, from those statutes. The aim was to strike a reasonable balance between rights of the individual and those of the state, wherein the individual is required to sacrifice a measure of freedom of action for the good of the state.[7]

LEGAL PRECEDENTS

Reutter wrote that there existed "a point beyond which the state may not go" without violating basic rights guaranteed by the Constitution.[8] That point was more clearly defined by Pierce v. the Society of Sisters, the 1925 case that invalidated an Oregon law requiring normal children between the ages of eight and

sixteen to attend public schools. Reutter explained the decision as follows:

> The balance struck was that parents had the right to direct the upbringing of their children. They could send them to private schools, but the state could establish minimum standards of education for the schools. The state could reasonably regulate all schools, including inspecting, supervising, and examining them, their teachers, and pupils. 9

Pierce v. Society of Sisters came out of an Oregon law that all children enrolled in the first through the eighth grades must attend public schools. The Society of the Sisters of the Holy Names of Jesus and Mary opened a private school and sued the State of Oregon on the basis of the First Amendment to the U.S. Constitution having to do with prohibiting religion. The case went all the way to the U.S. Supreme Court, which rulec that the Oregon law was unconstitutional. While the Court found that the State of Oregon could reasonably regulate all schools and that all children must attend some school, it ruled that they could not be forced to attend public schools. This case established that children in grades one through eight were minors in the eyes of the law and would be treated differently than those in higher grades.[10]

In Stephens v. Bongart in 1937, and The State v. Massa in 1967, the courts supported the state in its attempts to compell children to attend the more formal schools, whether they were public or private, rather than receiving their instruction in their homes. In the

former, New Jersey courts strongly suggested that the lack of free association with other students when learning was done in the home, denied equivalency in education to those children.[11] In the latter litigation forty years later, another New Jersey court expressly rejected the inclusion of social development as a factor in determining whether home instruction was the equivalent of in-school instruction.[12] Reutter offered additional information relative to the 1967 case, as follows:

> (The court) found the prior interpretation (of the statute in Stephens v. Bongart) to be untenable in its language. The statute stated that the requirement of compulsory education could be fulfilled only if the child received equivalent instruction at school. 13

Ultimately the court declared that to develop socially, group education would be needed. But, it reasoned, a group would constitute a de facto school. Thus, the only reason for the phrasing of the statute would be to permit individual instruction that was to be judged on the basis of academic equivalency. Reutter continued:

> In State v. Massa the court identified the term "educational equivalent" based on examination of materials used by the parents, a report by an independent testing service of the students' scores, and the organization of the program that the mother had used. 14

It should be noted in passing that several cases during the 1980's used measurements that were very similar to the ones used in State v. Massa to evaluate a home school situation.

Another example of the courts seeking to maintain

a balance between the parents seeking to teach their children at home and compulsory education statutes came in Wisconsin v. Yoder, a 1972 landmark case involving Amish children who were forced to submit to compulsory education beyond the eighth grade. The State of Wisconsin filed suit against the parents of these children for violating its compulsory attendance regulations.

The Amish parents made a convincing showing that, for almost 300 years, their sustained faith had regulated their lives, and this would be gravely endangered by enforcement of compulsory education beyond the eighth grade.[15] It was also pointed out that the Amish had traditionally channeled their children into agricultural employment, and that, historically, public school students had been allowed to leave school before the normal end of the school day to work in agriculture.[16]

In its 1972 decision the U.S. Supreme Court held for the parents under the free exercise of religion clause of the First Amendment, which prevented any state from requiring Amish children to submit to compulsory education beyond the eighth grade. In its decision, the Court added:

> There is no doubt as to the power of the state to impose reasonable regulations for the control and duration of basic education. It can also not be overemphasized that the Amish were not a group claiming to have recently discovered some progressive or more enlightened process for rearing children for modern life. 16

The above caution appears to be directed at parents who seek to find constitutional grounds for teaching their

children in the home. In this decision, as in virtually all cases relative to compulsory education, the Court maintained a balance between the rights of children and their parents and the rights of the state to enforce compulsory education for the good of society as a whole.

The Court also correlated Wisconsin's compulsory education law with the Federal Fair Labor Standards Act, which forbade children under age sixteen from working in most circumstances. This case supplies crucial precedent in the several cases from the 1980's which will be discussed in the next section of this paper.

RECENT LITIGATION

As mentioned earlier, the courts had generally been consistent in supporting compulsory education with certain specific exceptions through the 1970's. The emphasis had always been on taking an even-handed approach. In the cases from the 1980's that were considered in the process of researching this paper, the courts appeared to take positions that demonstrated much less consistency.

In Duro v. District Attorney, Second Judicial District of North Carolina, a 1983 case, a parent filed action against the District Attorney alleging that his religious beliefs were infringed upon by the state's compulsory education law. The U.S. District Court for the Eastern District of North Carolina entered a summary judgement for the parent, and the District Attorney appealed.

The Court of Appeals held that the State demonstrated interest in compulsory education of a sufficient magnitude to override the religious interests of the parent who refused to enroll his children in the public school, or the only available nonpublic school, on the basis that exposing his children to others who did not share his religious beliefs would corrupt them.[17] The District Court decision was reversed.

In its ruling, the Appeals Court added:

> Duro has not demonstrated that home instruction will prepare his children to be self-sufficient participants in our modern society or enable them to participate intelligently in our political system, which, as the Supreme Court stated, is a compelling interest of the state.
>
> We find, therefore, that this case is factually distinguishable from Yoder. The welfare of the children is paramount and their future well-being mandates attendance at a public or non-public school. 18

In Ellis v. O'hara, a 1985 Missouri case that was essentially similar to the Duro case, the parents were charged with educational neglect for keeping their children from attending a public or non-public school. The parents challenged the constitutionality of the Missouri compulsory education statute. The Court held that using the terms "substantially equivalent to that in the local school" was unconstitutionally vague, and the motion was granted. In its decision, the Court continued:

> This statute represents a prime example of legislation which yields an unacceptable amount of discretion to officials charged with its enforcement. The statute does not comply with due process requirements. 19

The Court indicated that Missouri's compulsory

education laws were less elaborate than those in other states, primarily in Maine, and that substantially less detail was used to define the term "substantially equivalent." In effect, the Court left it to the Missouri Legislature to enact new statutes which contain more precise definitions of this and other terms relative to the home instruction issue.

In Delconte v. The State of North Carolina, a 1985 case involving parents who wanted to teach their children at home, the Superior Court ruled in favor of the parents. The Court of Appeals reversed that decision. The State petitioned for discretionary view, and the Supreme Court reversed the appeals court. In its decision, the Supreme Court said:

> The Legislature has not sought to define what is, or is not, a "school;" rather, it has enacted various objective statuatory criteria which various kinds of schools must meet in order for students attending them to comport with the compulsory attendance requirement. 20

The parents' position was further strengthened by standardized test scores that showed that their children were achieving at "average or better than average rates academically" and getting "at least a good average education or better."[21] The Court continued:

> Whether home instruction ought to be permitted and the extent to which it should be regulated are questions of public policy which are reasonably debatable.
>
> Whatever the Legislature ultimately decides to do, we are satisfied that it would not be appropriate for us to determine whether home instruction may be constitutionally prohibited, or the extent to which it may be regulated, until the Legislature has determined ... to regulate it more closely. 22

SUMMARY AND CONCLUSIONS

It appears that the courts are now paying much closer attention to specific standards and requirements in their decisions relative to compulsory attendance cases. They have consistently held that these actions should be decided on a case-by-case basis. Existing standards have been upheld where they have existed, and the courts have given to state legislatures the ultimate task of defining key issues relative to this question. Reutter summed up this position when he wrote:

> ... compulsory education is dependent on the statutes establishing it. It does not exist at common law. Equivalencies can be specified in the statutes. Thus, home instruction per se is not precluded by common law as a possible substitute for instruction in a school. 23

NOTES

[1] E.E. Reutter, The Law of Public Education, 3ed., (Mineola, N.Y.: The Foundation Press, 1985) p. 668.

[2] Ibid.

[3] Gordon E. Gee and David J. Sperry, Education Law and the Public Schools: A Compendium, (Boston: Allyn and Bacon, 1978) p. 29.

[4] Rush Welter, Popular Education and Democratic Thought in America. (Maryland: Columbia University Press, 1962) p. 34.

[5] Gee, pp. 19-20.

[6] D.L. Kirp and Mark G. Yudof, Education Policy and the Law - Cases and Materials, (Berkeley: McCutchen Publishing, 1974) p. 6.

[7] Reutter, p. 669.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid, p. 672.

[12] Ibid. p. 673.

[13] Ibid.

[14] Ibid., p. 672.

[15] Ibid., p. 669.

[16] Ibid.

[17] 712 Federal Reporter, 2d Series, 1983, p. 98.

[18] Ibid.

[19]612 Federal Supplement, D. C. Mo., 1985, p. 380.

[20]329 South Eastern Reporter, 2d Series, 1985, p. 640.

[21]Ibid., p. 642.

[22]Ibid.

[23]Reutter, p. 668.

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